

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

----- x  
JAMES CARO,

Plaintiff,

- against -

DANIEL STEWART, Commissioner of  
Department of Corrections, et al.,

Defendants.  
----- x

USDC SDNY  
DOCUMENT  
ELECTRONICALLY FILED  
DOC #:  
DATE FILED: September 9, 2011

09 Civ. 10313 (PAC) (FM)

ORDER ADOPTING R&R

HONORABLE PAUL A. CROTTY, United States District Judge:

James Caro ("Caro") instituted this action, pro se, pursuant to 42 U.S.C. § 1983, against the Commissioner of the Department of Corrections, the Warden of Otis Bantum Correctional Facility, and a correctional officer at this facility (collectively "Defendants") on December 21, 2009. On January 4, 2010, the matter was referred to Magistrate Judge Maas for all pretrial matters and dispositive motions.

Caro failed to return the documentation necessary to effect service to the Marshal's Service or file proof of service. On August 25, 2010, Magistrate Judge Maas directed the Pro Se Office to issue a supplemental summons and directed Caro to serve the supplemental summons and complaint on the Defendants by October 27, 2010. (Report and Recommendation ("R&R") 1.) Magistrate Judge Maas cautioned that Caro's failure to effect service, or show good cause why service has not been effected by October 27, 2010, would result in a recommendation that the complaint be dismissed, pursuant to Federal Rules of Civil Procedure 4(m). On November 1, 2010, when Magistrate Judge Maas noted that Caro had not complied with the August 25 order, he recommended dismissal without prejudice. (Id. at 1-2.) Written objections were due in 14 days, but none were filed.

### **DISCUSSION**

In reviewing a report and recommendation, a Court “may accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate judge.” 28 U.S.C. § 636(b)(1)(C). “The district court may adopt those portions of the report to which no timely objection has been made, so long as there is no clear error on the face of the record.” Feehan v. Feehan, No. 09 Civ. 7016 (DAB), 2011 WL 497776 at \*1 (S.D.N.Y. Feb. 10, 2011).

Fed. R. Civ. P. 4(m) provides that “[i]f a defendant is not served within 120 days after the complaint is filed, the court — on motion or on its own after notice to the plaintiff — must dismiss the action without prejudice against that defendant or order that service be made within a specified time. But if the plaintiff shows good cause for the failure, the court must extend the time for service for an appropriate period.”

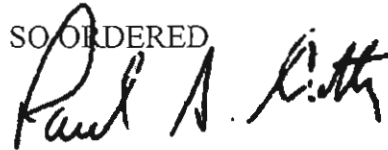
Caro was afforded two opportunities to effect service but failed to do so on both occasions. Magistrate Judge Maas found that Caro had failed to return the documentation necessary to effect service to the Marshal’s Service, or show good cause for failing to comply with the August 25, 2010 Order, and accordingly the complaint should be dismissed without prejudice. This Court agrees.

**CONCLUSION**

There is no clear error in Magistrate Judge Maas's analysis, and the Court adopts Magistrate Judge Maas's R&R in its entirety. Caro's complaint is, therefore, dismissed without prejudice. The Clerk of Court is directed to enter judgment and close this case. Pursuant to 28 U.S.C § 1915(a), this Court finds that any appeal from this order would not be taken in good faith.

Dated: New York, New York  
September 9, 2011

SO ORDERED

A handwritten signature in black ink, appearing to read "Paul A. Crotty", written over a horizontal line.

PAUL A. CROTTY  
United States District Judge

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